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5
6 Attorneys for Plaintiff
JOHN J. SARSFIELD

7 IN THE UNITED STATES DISTRICT COURT

8 NORTHERN DISTRICT OF CALIFORNIA

9 SAN JOSE DIVISION

10
11 JOHN J. SARSFIELD,) Case No. C-07-2528 JF
12)
13 Plaintiff,) **STIPULATION AND ORDER GRANTING**
14 v.) **LEAVE TO FILE FOURTH AMENDED**
15) **COMPLAINT**

16 COUNTY OF SAN BENITO, JAIME DE LA)
17 CRUZ, in his official capacity, REB)
MONACO, in his official capacity,)
18 ANTHONY BOTELHO, in his official)
capacity, DON MARCUS, in his official)
capacity, and DOES 1 through 10, inclusive,)

19 Defendants.)
20 _____)

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1 Plaintiff JOHN SARSFIELD, through his attorneys, MAYO & MAYO and TERENCE
2 O. MAYO, and Defendants COUNTY OF SAN BENITO, JAIME DE LA CRUZ, in his official
3 capacity, REB MONACO, in his official capacity, ANTHONY BOTELHO, in his official
4 capacity, DON MARCUS, in his official capacity, through their attorneys, ROPERS MAJESKI
5 KOHN BENTLEY and STEPHAN A. BARBER, hereby stipulate that said Plaintiff shall have
6 leave to file a Fourth Amended Complaint in the form attached hereto, marked Exhibit A and
7 incorporated by reference.

8
9 IT IS SO STIPULATED.
10

11 Dated: July 21, 2009

MAYO & MAYO
Attorneys for Plaintiff JOHN J.
SARSFIELD

12 By:


TERENCE O. MAYO

13
14 Dated: July 29, 2009

15 ROPERS MAJESKI KOHN BENTLEY
16 Attorneys for Defendants COUNTY OF
17 SAN BENITO, JAIME DE LA CRUZ, in
18 his official capacity, REB MONACO, in
19 his official capacity, ANTHONY
BOTELHO, in his official capacity, DON
MARCUS, in his official capacity

20 By:


STEPHAN A. BARBER

21
22 IT IS SO ORDERED.
23

24 Dated: 8/10, 2009

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The Honorable Jeremy Fogel, United
States District Judge

1 TERENCE O. MAYO, SBN #62035
2 MAYO & MAYO
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4 SAN FRANCISCO, CA 94104
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8 Attorneys for Plaintiff
9 JOHN SARSFIELD

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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

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JOHN SARSFIELD)	CASE NO. C 07-2528 JF
Plaintiff,)	FOURTH AMENDED COMPLAINT
v.)	FOR DAMAGES
County of San Benito,)	(1) 42 U.S.C. SECTION 1983
Jaime De La Cruz, in his official capacity)	(2) BREACH OF CONTRACT
Reb Monaco, in his official capacity)	(3) INTENTIONAL INFILCTION
Anthony Botelho, in his official capacity)	OF EMOTIONAL DISTRESS
Don Marcus, in his official capacity)	
and Does 1 through 10, inclusive,)	
Defendants.)	
)	
)	DEMAND FOR JURY

Plaintiff John J. Sarsfield alleges on information and belief:

Jurisdiction and Venue:

1. This action arises under the Constitution of the United States, particularly the First, Fifth and Fourteenth Amendments, under the laws of the United States, particularly 42 U.S.C. Sections 1983 and 1988, and the laws of the State of California.

1 2. The jurisdiction of this court is invoked under the provisions of 28 U.S.C.
2 Sections 1331 and 1343.

3 3. Venue is in this district because it is where the events complained of occurred.

4 **FIRST CAUSE OF ACTION**

5 (42 U.S.C. Section 1983)

6 4. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as
7 Does 1 through 10, inclusive, and therefore sues these Defendants by such fictitious names.
8 Plaintiff will amend this complaint to allege their true names and capacities when
9 ascertained. Plaintiff is informed and believes and thereon alleges that each of these
10 fictitiously named Defendants are responsible in some manner for the acts of omissions
11 herein alleged, and that Plaintiff's injuries as alleged herein were proximately caused by the
12 acts of omissions.

13 5. Plaintiff is informed and believes and thereon alleges that at all times relevant to
14 and mentioned herein, the Defendants and each of them, were the agents and employees of
15 each of the remaining Defendants, and in doing the things hereinafter alleged, were acting
16 within the course and scope of their authority as such agents and employees with the
17 permission and consent of their co-Defendants.

18 6. Plaintiff John Sarsfield was at all times relevant to this matter the District
19 Attorney of the County of San Benito and a resident of the Northern District of California
20 and the County of San Benito. Plaintiff, as District Attorney, had a duty to enforce
21 violations of state criminal law, and limited violations of state civil law, such as unfair
22 business practices or environmental violations. As District Attorney Plaintiff had no
23 jurisdiction to investigate, speak about, or prosecute violations of federal criminal law.

24 Plaintiff as District Attorney had no duty to speak out on matters of public concern such as
25 breaches of the public trust, or the criminal misconduct of high ranking county government
26 officials. Further, Plaintiff had no duty as a state law enforcement official (district attorney)
27 to investigate, report or enforce violations of federal criminal or civil law. At all times
28

1 relevant to this complaint when Plaintiff spoke out on matters of public concern, allegations
2 of criminal misconduct by high ranking local government officials, or breaches of the public
3 trust, he was speaking in his personal capacity as a citizen. Plaintiff's duties as district
4 attorney were limited to the investigation and prosecution of violations of state law.
5

6 Plaintiff had no duty as district attorney to investigate, participate in, support, or otherwise
7 forward to third parties or government entities personnel complaints, workplace harassment
8 claims, allegations of employment discrimination, or employment retaliation brought against
9 high ranking local government officials such as supervisor defendants. Further, Plaintiff as
10 district attorney had no authority to investigate claims of workplace harassment brought by
11 employees of the County of San Benito, including staff of the district attorney's office. Said
12 authority to investigate any such complaints rested exclusively with defendant County. At
13 all times relevant herein, when Plaintiff engaged in any such activities in support of
14 personnel complaints filed by third persons, said actions were in Plaintiff's personal capacity
15 as a citizen, and not as district attorney. At all times relevant herein, the personnel
16 workplace harassment complaints referred to herein that were forwarded and supported by
17 Plaintiff were brought by district attorney employees solely against defendant supervisors
20 and their agents.

21 7. Defendant County of San Benito (hereinafter "County") is and was a local
22 governmental entity, organized under the laws of the State of California and subject to the
23 laws of the United States, the State of California, and the Constitutions of the United States
24 and the State of California. County promulgates rules, ordinances and regulations which are
25 binding upon County and its officers and employees, and have the force and effect of law.
26 The County is governed and lead by a five person Board of Supervisors (hereinafter
27 "Board"). The County exercises its powers through the direction and orders of the Board.
28 The County sets the pay and benefits of County employees, department heads, and officers,

1 including Plaintiff, issues paychecks, contributes to the retirement funds of County
2 employees, department heads and officers, including Plaintiff, and supervises the personnel
3 hiring practices, fills employee vacancies, including the position of District Attorney in the
4 event it becomes vacant, and is the employer of all County employees. The County also
5 furnishes employees, department heads, and officers, including the District Attorney, their
6 workplace and equipment necessary to perform their work. The County also issues annual
7 income tax statements to employees, department heads, and officers, including the District
8 Attorney. County in all aspects is the employer of Plaintiff, except as to the performance of
9 Plaintiff's professional duties. County has also adopted rules, policies and procedures which
10 require and mandate confidentiality in personnel matters, including complaints against staff
11 or department heads.

12 8. Defendants Jaime De La Cruz, Reb Monaco, Anthony Botelho, and Don Marcus
13 are members of the Board of Supervisors of the County and as such are responsible for
14 creating and setting policy, directing its actions and omissions, and otherwise supervising
15 subordinate County personnel. At all times relevant to this complaint, the supervisor
16 defendants mentioned herein were not personally bound by the terms of the various
17 contractual agreements entered into and in effect between Plaintiff, County, Fancher,
18 Roybal, and others. As such, any actions taken by said supervisor defendants that affected
19 said contractual agreements were either taken on behalf of and at the behest of defendant
20 County, or were in their personal capacities and as strangers to the agreements.

21 9. On or about the late Spring and continuing into the Summer of 2004, County
22 employees Katie Fancher ("Fancher") and Julia Roybal ("Roybal") filed a lawsuit in San
23 Benito County Superior Court against County and Plaintiff (hereinafter referred to as
24 Fancher/Roybal I).

25 10. On or about October 2004, Plaintiff County, and Fancher and Roybal, while in
26 San Francisco, California, entered into a written agreement to engage in confidential
27 mediation talks in an effort to settle and resolve the Fancher/Roybal I matter. The
28 agreement required all parties to it (Plaintiff, County, its employees, Fancher, and Roybal) to
maintain the confidentiality of the scope of the discussions held during mediation. The

1 agreement was binding and applicable to County, its officers, employees, including Fancher
2 and Roybal, department heads, officers, Board members, and Plaintiff. Said agreement was
3 of value to Plaintiff and as such constituted his personal property.

4 11. On or about November 2004, Defendant Monaco, acting on behalf of Defendant
5 County and in his official capacity, intentionally and tortiously interfered with the
6 contractual relationship between County, plaintiff, Fancher, and Roybal, and breached the
7 mediation agreement without legal excuse or just cause, by publicly discussing in a local
8 San Benito County newspaper the confidential topics of discussions held during the
9 mediation talks in October 2004. Defendant Monaco's actions also violated County's own
10 policies, practices and rules requiring confidentiality in personnel matters. Defendant
11 Monaco's actions were designed to and calculated to take the property interests of Plaintiff;
12 moreover, Defendant Monaco's actions did in fact constitute a taking of Plaintiff's property,
13 i.e., the value of the confidentiality agreement, without compensation and in retaliation for
14 Plaintiff having engaged in the following conduct, all of which conduct constituted speech
15 or conduct protected under the First Amendment of the United States Constitution and all of
16 which was undertaken by Plaintiff in his personal capacity and not as part of his official
17 duties as District Attorney: Reporting to the Federal Bureau of Investigation, in his
18 (Plaintiff's) individual capacity as a citizen, alleged criminal wrongdoing by Defendant De
19 La Cruz and others (said report having been made in late Spring and early Summer of 2004),
20 as well as reports made to the California Attorney General's Office/Department of Justice at
21 the same time,

22 12. Neither Defendant Monaco, nor any other Supervisor defendant were parties in
23 their personal capacity to the mediation agreement contract between Plaintiff, County,
24 Fancher and Roybal, and any documents that may have been executed by any of them were
25 done merely as representatives of County. At no time did Plaintiff receive compensation for
26 the taking of his property by Defendants, as is required by the First and Fourteenth
27 Amendments. Plaintiff objected to Defendant Monaco's actions by County failed to take
28 any action to discipline Monaco or to otherwise prevent future similar acts by Defendant
Monaco and others.

1 13. On and about December 2004 and continuing into January 2005, the County,
2 through Defendants Botelho and Marcus, negotiated and entered into a written settlement
3 agreement (contract) with Plaintiff in the Fancher/Royal I matter. The County, through
4 Defendants Botelho and Marcus, induced Plaintiff to settle the Fancher/Royal I matter by
5 agreeing to and promising to, among other things, defend and indemnify Plaintiff for
6 litigation costs arising out of future legal actions anticipated to be brought by employees
7 Fancher and Royal, and to maintain the confidentiality provisions of the settlement
8 agreement in the Fancher/Royal I matter, and its terms. Relying on County's promises,
9 Plaintiff agreed to settle the Fancher/Royal I matter. The terms of the agreement were
10 binding and applicable to County, its officers, employees, including Fancher and Royal,
11 department heads, officers, Board members in their official capacities, and Plaintiff.
12 Additionally, County's own rules, regulations and practices required county and its officers
13 and employees to keep the terms of the settlement agreement and any underlying personnel
14 issues or information confidential.

15 14. Shortly after the agreement was reached in the Fancher/Royal I matter, County
16 employees, or agents of County employees, in retaliation for the conduct of Plaintiff as
17 described above in Paragraph 11, breached the confidentiality terms of the agreement in
18 violation of County rules, regulations and practices, by releasing to the local media copies of
19 confidential documents disclosed during the mediation talks in October 2004 pursuant to the
20 earlier mentioned mediation agreement. These actions were taken on behalf of defendant
21 County and by the individual defendant's or their agents. Said release of documents had the
22 effect of taking the value of the contract from Plaintiff and was designed and intended to
23 inflict harm, physical and emotional distress upon Plaintiff, and was done with malicious
24 intent.

25 15. Immediately after the release of the confidential documents, Plaintiff
26 complained to County and its officers and demanded that the employees responsible be
27 located, identified and disciplined. County failed and refused to adequately investigate the
28 leak of the private and confidential information and failed to discipline any County

1 employee, officer, or department head, thereby condoning such conduct through County's
2 inaction.

3 16. On and about the late Winter of 2005 and continuing through the Spring and into
4 the Summer, County employees Fancher and Roybal initiated new litigation in San Benito
5 County Superior Court, as anticipated by Plaintiff and County during the negotiations
6 described above. The new litigation (hereinafter referred to as Fancher/Roybal II) was an
7 attempt to overturn the confidentiality provisions of the settlement agreement of
8 Fancher/Roybal I, as well as to violate County's confidentiality rules in personnel matters.

9 17. Contemporaneously to and following the filing of the Fancher/Roybal II,
10 Defendant De La Cruz acting on behalf of County, either personally or through his agents,
11 and also acting in his individual capacity as a private person who was not personally bound
12 by the terms of the settlement agreement and contract entered into between Plaintiff,
13 County, Fancher, and Roybal, began publicly discussing, publishing, and assisting to be
14 published, details of the confidential settlement agreement entered into in the
15 Fancher/Roybal I matter, thereby interfering with the performance of defendant County's
16 contractual obligations to Plaintiff, and the enjoyment of the contractual benefits enjoyed by
17 Plaintiff under the terms of the agreement, and thereby breaching the settlement
18 agreement/contract and invading Plaintiff's right to privacy and taking from Plaintiff
19 without just cause, due process, or fair compensation the value of Plaintiff's property. These
20 actions of Defendant De La Cruz were taken to retaliate against Plaintiff for Plaintiff having
21 engaged in the conduct described above in Paragraph 11, as well as in retaliation for
22 Plaintiff having engaged in the following conduct, in which Plaintiff had commenced to
23 engage in the Spring of 2005, in the following conduct: Forwarding County employee
24 workplace harassment complaints against De La Cruz to the County of San Benito human
25 resources department ,

26 18. The litigation in the Fancher/Roybal II matter was brought against County
27 although Plaintiff appeared as Amicus and was the de facto real party in interest, as County
28 employees Fancher and Roybal were attempting to overturn provisions of the settlement
agreement in Fancher/Roybal I under the pretext of a Public Record Act action, as well as to

1 invade Plaintiff's privacy, and to take Plaintiff's property (the value of the confidentiality
2 clause of the Fancher/Roybal I agreement) without just compensation.

3 19. Subsequent to the filing of Fancher/Roybal II, County, through its agents,
4 pressured Plaintiff to voluntarily agree to the release of confidential personnel documents
5 without any compensation or consideration as demanded in said lawsuit. Plaintiff refused.

6 20. Plaintiff's position in the Fancher/Roybal II matter prevailed, as no additional
7 confidential documents were released by the court, other than those already illegally
8 released in violation of the settlement agreement in Fancher/Roybal I. Plaintiff incurred
9 legal fees of approximately \$14,000.00 in the successful defense of the Fancher/Roybal I
10 agreement and its terms.

11 21. On or about August 28, 2006, Plaintiff, through counsel, presented County with
12 the bill/request for indemnification for the legal services in Fancher/Roybal II matter,
13 pursuant to the indemnification clause of the Fancher/Roybal I agreement and the past
14 practices of County,. On or about September 13, 2006, County breached the settlement
15 agreement in Fancher/Roybal I by failing to indemnify Plaintiff as required. Specifically
16 County failed to pay the legal fees and costs incurred by Plaintiff in the approximate
17 \$14,000.00 bill as required both by the agreement and promises of Defendants Botelho and
18 Marcus as well as by the past practices of County. County's actions in failing to honor the
19 requirements of the agreement by failing to indemnify Plaintiff for said legal fees and costs
20 occurred through the direction and control of the individual Defendants named herein and
21 was done in retaliation for the conduct of Plaintiff as described above in Paragraphs 11 and
22 17, as well as in retaliation for the following conduct of Plaintiff, all of which was conduct
23 undertaken by Plaintiff in his capacity as a private citizen and protected free speech under
24 the First Amendment to the United States Constitution:

25 A. Speaking out publicly as a private citizen about matters of public concern,
26 that is, allegations of criminal and other serious misconduct, and breaches of the public trust,
27 of high ranking County government officials such as Defendant De La Cruz and others;

28 B. Assisting, in his personal capacity only, in the publication of an online,
satirical political commentary (blog) known as "The Hollister Free Press Online;"

1 (hereinafter referred to as the "HFPO"), which was a compilation of opinion, satire and
2 news articles commenting on political events, personalities, and governmental actions, and
3 elected officials in San Benito County, and which criticized and/or satirized the County of
4 San Benito as well as members of its Board of Supervisors, including, but not limited to, the
5 individual defendants named herein. The HFPO was frequently critical of the statements,
6 actions and associations of the individual Defendants named herein.

7 C. Having reported to the print and electronic media that Defendant Monaco
8 belonged to an organization entitled "Society for the Scientific Study of Sexuality," which
9 organization, among other things, provided a forum for advocates of the legalization of
10 pedophilia;

11 D. Politically opposing Defendant Monaco by, among other things, including
12 Plaintiff having supported an opponent of Defendant Monaco in the June 2006 election for
13 County supervisor, as well as in assisting in the publication of information about Defendants
14 Monaco and De La Cruz in the HFPO, and including Plaintiff having supported the recall
15 effort against Defendant De La Cruz.

16 22. Additionally, County had a long established practice of paying the work related
17 expenses, including legal expenses, of County department heads and officers, including
18 members of the Board of Supervisors, the County Sheriff, the County Clerk, the District
19 Attorney, and the County Auditor. County's failure to pay the presented claim was a denial
20 of Plaintiff's rights under the First and Fourteenth Amendments to the United States
21 Constitution, as well as a denial of equal protection of the law, under the Fourteenth
22 Amendment of the United States Constitution, as well as a taking of Plaintiff's property (the
23 value of the indemnification clause of the Fancher/Roybal I agreement) without just
24 compensation, in violation of the Fifth Amendment and Fourteenth Amendments of the
25 United States Constitution, in retaliation for Plaintiff's conduct as described in Paragraphs
26 11, 17, and subparagraphs 21A, 21B, 21C and 21D.

27 23. Separate and distinct from the above breaches of contract and retaliations, on or
28 about March 28, 2006, County, through the actions of Defendants Jaime De La Cruz, Reb
Monaco, Anthony Botelho, and Don Marcus, with the assistance of County employees

1 Susan Thompson and Irma Valencia, engaged in an ultra-vires and de-facto public
2 disciplinary hearing of Plaintiff. Valencia and Thompson are agents and employees of
3 Defendants and at all times herein were acting in that capacity. Defendants engaged in said
4 ultra vires and de facto public disciplinary hearing of Plaintiff in retaliation against Plaintiff
5 because Plaintiff had engaged in the conduct described above in Paragraphs 11, 17 and 21,
6 except for the conduct of Plaintiff described in subparagraph 21D, which had not yet
7 occurred. Moreover, County, through the actions of Defendants De La Cruz, Monaco,
8 Botelho, and Marcus, with the assistance of Susan Thompson and Irma Valencia, has
9 engaged and continues to engage in a practice of conducting personnel actions that affect
10 either county employees, department heads, and other officials, including Plaintiff, in
11 violation of basic minimal tenets of Constitutional due process, and in violation of County's
12 own policies requiring confidentiality in such matters. County failed and continues to fail to
13 adequately notify persons, including Plaintiff, subjected to disciplinary or personnel process
14 of the nature of the allegations against them, failed and continues to fail to provide for
15 independent and unbiased investigators to examine and investigate allegations of
16 misconduct, and failed and continues to fail to separate fact-gathering from fact-finding
17 roles. Additionally, County failed and continues to fail to establish any meaningful
18 guidelines or policies to guide the sound exercise of discretion in deciding personnel or
19 disciplinary matters, and as a result, said actions were and continue to be decided in arbitrary
20 and capricious manner. Furthermore, County has failed to adopt policies which prevent
21 biased decision makers from participating in the disciplinary or personnel process, and
22 County failed and continues to fail to establish any meaningful procedures for appeal of
23 unfavorable actions or decisions. Furthermore, County failed and continues to fail to
24 provide for person's accused of misconduct to submit evidence on their behalf during
25 disciplinary or personnel actions. Furthermore, County has disclosed and continues to
26 routinely disclose confidential personnel matters in violation of its own policy to the
27 contrary.

28 24. Furthermore, County repeatedly subjected Plaintiff to this unconstitutional
personnel and/or disciplinary system starting in 2004, in retaliation for Plaintiff engaging in

1 the conduct described above in Paragraph 11, and continuing until Plaintiff departed from
2 his employment in San Benito County. County's actions have the affect of taking without
3 due process the property of person's subjected to the disciplinary/personnel scheme, or
4 infringing upon the liberty interests of such persons, including Plaintiff. County's conduct
5 in subjecting Plaintiff to this unconstitutional personnel and/or disciplinary system, as it
6 continued until Plaintiff departed from his employment in San Benito County, was,
7 commencing in early 2005, was also undertaken by County in retaliation for the conduct of
8 Plaintiff described above in Paragraph 17. County's conduct in subjecting Plaintiff to this
9 unconstitutional personnel and/or disciplinary system, as it continued until Plaintiff departed
10 from his employment in San Benito County, was, commencing in early 2006, also
11 undertaken by County in retaliation for the conduct of Plaintiff described above in
12 subparagraphs 21A, 21B, and 21C. County's conduct in subjecting Plaintiff to this
13 unconstitutional personnel and/or disciplinary system, as it continued until Plaintiff departed
14 from his employment in San Benito County, was, commencing in mid- 2006, was also
15 undertaken by County in retaliation for the conduct of Plaintiff described above in
16 subparagraphs 21D.

17 25. County subjected Plaintiff to the de facto, illegal disciplinary process in the
18 Spring of 2006, as described above in Paragraphs 23 and 24, which was calculated to and
19 had the effect of infringing upon Plaintiff's liberty interests and property interests. This
20 disciplinary process consisted of public accusations public accusations and discussions of
21 professional negligence, or words to that effect, against Plaintiff by Defendants, and further
22 violating of the confidentiality provisions of the agreements in Fancher-Roybal I. Defendant
23 County failed to conduct any sort of investigation prior to making accusations of
24 professional misconduct, failed to provide Plaintiff of notice of the allegations against him
25 upon which the adverse disciplinary action was being based, failed to provide Plaintiff with
26 the materials upon which such contemplated actions were based, failed to provide Plaintiff
27 with an opportunity to rebut said allegations, failed to provide Plaintiff for an opportunity to
28 appeal any findings, and violated basic tenets of fairness and due process by allowing
decision makers who were witnesses against Plaintiff to make fact finding decisions and

1 vote to impose de facto discipline upon Plaintiff. Defendants actions prevented and
2 foreclosed Plaintiff from being able to seek employment in his career of choice as a
3 prosecutor, and in fact has so prevented Plaintiff. Further, Defendants actions as described
4 above in Paragraphs 23 and 24 as well as in this Paragraph 25 constituted a violation of
5 Plaintiff's rights under the First, Fifth, and Fourteenth Amendments; and said actions were
6 undertaken by Defendant in retaliation for Plaintiff having engaged in the conduct described
7 above in Paragraph 11 and in subparagraphs A through F thereof.

8 26.. During the course of said hearing, County, through the actions of and
9 statements of Defendants De La Cruz, Monaco, Botelho and Marcus, defamed Plaintiff by
10 accusing him of professional negligence, or words to that effect, and by Defendant Botelho
11 wrongfully publicly stating that "employees had to be transferred to a different office
12 because of his (Plaintiff's) conduct" or words to that effect, which Defendant Botelho knew
13 in fact at the time was both false and in specific violation of the confidentiality provisions of
14 the Fancher/Roybal I settlement agreement.

15 27.. Additionally, Plaintiff is unaware of any other County employee, department
16 head, or officer who has ever been subjected to a similar public and de-facto disciplinary
17 hearing and on information and belief asserts that no other department head has been
18 similarly treated, and as such violated Plaintiff's right to equal protection of the laws.
19 Plaintiff was not furnished with any evidence relied upon by Defendants during the course
20 of said hearing, and was therefore not provided a meaningful opportunity to rebut said
21 evidence. Finally, the hearing by County and breach of the terms of the confidentiality
22 clause in the Fancher/Roybal I matter had the effect of taking the property of Plaintiff
23 without just compensation, ie, the economic value of the confidentiality provision of the
24 Fancher/Roybal I agreement.

25 28.. The actions at the de-facto disciplinary hearing taken by County and Defendants
26 De La Cruz, Monaco, Botelho and Marcus, were in violation of Plaintiff's right to privacy
27 arising out of the settlement agreement in Fancher/Roybal I, as well as in violation of
28 County policies requiring confidentiality in such matters, as well as an illegal interference
with Plaintiff's right to the benefits of the settlement agreement at all of its provisions. The

1 actions were taken to and did in fact retaliate against Plaintiff as described above, and to
2 inflict severe emotional distress upon him, and were in violation of County's own policies
3 preventing retaliation against persons who cooperate in anti-discrimination matters, and
4 were an infringement of Plaintiff's right to liberty under the Fifth and Fourteenth
5 Amendments of the United States Constitution, in that they were designed to and did in fact
6 interfere with Plaintiff's ability to pursue his chosen profession, and constituted a taking of
7 Plaintiff's property without just compensation.

8 29. As a result of the continuing harassment and retaliation directed against Plaintiff
9 by Defendants as described above, Plaintiff, in his official capacity, was forced to seek and
10 did obtain a temporary restraining order and later a preliminary injunction in San Benito
11 County Superior Court against the individual Defendants named herein.

12 30. In addition to the foregoing conduct by defendants, Defendant De La Cruz
13 continued to retaliate against Plaintiff by repeatedly and publicly stating that Plaintiff was
14 mentally ill or words to that effect and demanded that Plaintiff be hospitalized and examined
15 or words to that effect.

16 31.. Following said hearing, County and Defendants De La Cruz, Monaco, Botelho
17 and Marcus, assisted by their agents Thompson and Valencia, continued to retaliate against
18 Plaintiff by interfering with and attempting to put into place illegal financial and other
19 controls over the District Attorney's Office. Additionally, Valencia was directed to file a
20 baseless complaint with the Attorney General's Office against Plaintiff, a complaint which
21 Valencia did send, later admitting under oath she did not know to be true, or words to that
22 effect. The Attorney General's Office declined to take any action on the complaint.

23 32.. In addition to the foregoing acts, Defendants De La Cruz, Monaco, Botelho and
24 Marcus, continued to retaliate against Plaintiff by refusing, and by causing other agents and
25 employees of Defendant County to refuse, to protect Plaintiff from repeated harassment
26 from County contract service providers, including, but not limited to, Arthur Cantu
27 ("Cantu"). Cantu would routinely harass Plaintiff and Plaintiff's employees in the District
28 Attorney's Office in and for Defendant County by filing baseless complaints, by engaging in
offensive touching of Plaintiff (August 2004), and by scaring Plaintiff's daughter by

1 bringing a horse that Cantu was riding in a parade in June, 2004, so close to Plaintiff and his
2 daughter during a parade that Plaintiff was extremely fearful for his safety and that of his
3 daughter. Despite requests by Plaintiff that Defendant County take steps to prevent Cantu
4 from engaging in such conduct, Defendants De La Cruz, Monaco, Botelho and Marcus
5 failed and refused to take any such steps to prevent Cantu from continuing to engage in such
6 conduct. The conduct of Defendants De La Cruz, Monaco, Botelho and Marcus as described
7 above in this Paragraph 32, as it continued until Plaintiff departed from his employment in
8 San Benito County, was, commencing in mid-2004, undertaken by De La Cruz, Monaco,
9 Botelho and Marcus in retaliation for the conduct of Plaintiff described above in Paragraph
10 11. The conduct of Defendants De La Cruz, Monaco, Botelho and Marcus as described
11 above in this Paragraph 32, as it continued until Plaintiff departed from his employment in
12 San Benito County, was, commencing in early 2005, undertaken by De La Cruz, Monaco,
13 Botelho and Marcus in retaliation for the conduct of Plaintiff described above in Paragraphs
14 11 and 17. The conduct of Defendants De La Cruz, Monaco, Botelho and Marcus as
15 described above in this Paragraph 32, as it continued until Plaintiff departed from his
16 employment in San Benito County, was, commencing in early 2006, undertaken by De La
17 Cruz, Monaco, Botelho and Marcus in retaliation for the conduct of Plaintiff described
18 above in Paragraphs 11 and 17 as well as in subparagraphs 21A, 21B and 21C. The conduct
19 of Defendants De La Cruz, Monaco, Botelho and Marcus as described above in this
20 Paragraph 32, as it continued until Plaintiff departed from his employment in San Benito
21 County, was, commencing in mid-2006, undertaken by De La Cruz, Monaco, Botelho and
22 Marcus in retaliation for the conduct of Plaintiff described above in Paragraphs 11 and 17 as
23 well as in subparagraphs 21A, 21B, 21C and 21D.

24 33. In addition to the foregoing acts, Defendants De La Cruz, Monaco, Botelho and
25 Marcus, continued to retaliate against Plaintiff, because Plaintiff had engaged in the conduct
26 described above in Paragraph 11, by refusing to protect Plaintiff from threats and other
27 dangerous actions, said threats being encouraged by the conduct and statements of Jaime De
28 La Cruz and his agents, resulting in the killing of Plaintiff's dogs in July, 2004.

1 34.. As a result of the conduct of Defendants as hereinabove alleged, Plaintiff's
2 health was seriously impacted, resulting in hypertension with resulting medical
3 complications, including an impact on Plaintiff's cardiac health.

4 35. The actions described above were taken by Defendants and each of them with
5 malice and with the intent to vex, annoy and harass Plaintiff, to inflict severe emotional
6 distress and physical harm, and were designed and calculated to take Plaintiff's property
7 without just compensation, and to punish and retaliate against Plaintiff for Plaintiff having
8 engaged in the conduct described above in Paragraph 11 and in subparagraphs A through F
9 thereof. Said conduct by Defendants had the effect of infringing upon Plaintiff's liberty
10 without due process of law. Defendants' actions also negligently inflicted severe emotional
11 distress upon Plaintiff.

12 36. As a direct and proximate result of the actions taken by County and Defendants
13 De La Cruz, Monaco, Botelho, and Marcus, Plaintiff has suffered economic harm by the loss
14 of the value of the Fancher/Roybal I settlement agreement , wrongfully been forced to incur
15 an approximate \$14,000.00 debt in the Fancher/Roybal II matter, had his liberty infringed
16 without due process of law, and been subjected to severe and pervasive emotional distress,
17 with resulting physical harm to Plaintiff's cardio-vascular system, been denied equal
18 protection of the laws, been denied due process of law, suffered a breach of the contract of
19 the Fancher/Roybal I matter, and had his privacy wrongfully invaded. Additionally,
20 Defendants actions created a hostile work environment for Plaintiff with the resulting severe
21 physical and emotional harm.

22 37. . Pursuant to 42 U.S.C. Section 1988, plaintiff is entitled to reasonable attorney's
23 fees.

24 38. On or about September 22, 2006, Plaintiff submitted an administrative claim
25 regarding the matters in this complaint to County pursuant to State Law. Said claim was
26 denied by County on November 13, 2006.

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SECOND CAUSE OF ACTION

39. As part of his Second Cause of Action, Plaintiff incorporated Paragraphs 1 through 38 of the First Cause of Action as though said Paragraphs were set forth herein in full by this reference.

40.. In January, 2005, Plaintiff and County, through Defendants Botelho and Marcus, entered into an agreement whereby County agreed to defend and indemnify Plaintiff for the litigation costs arising out of future legal actions anticipated to be brought by employees Fancher and Roybal, and to maintain the confidentiality provisions of the settlement agreement in the Fancher/Roybal I matter, and its terms. The facts and circumstances surrounding said agreement are set forth in more detail in Paragraph 12 above.

41.. Plaintiff agreed to the written settlement agreement resolving the Fancher/Royal I matter and otherwise performed all covenants, conditions and other acts to be performed by him under the terms of the said contract.

42. Defendants breached the contract by doing the things described above in Paragraphs 11 through 35 above.

43. As a result of said breach of contract by Defendants, Plaintiff has been damaged as alleged above in Paragraphs 28 and 36.

WHEREFORE, Plaintiff prays relief as hereinafter set forth.

THIRD CAUSE OF ACTION

44. Plaintiff, as part of his Third Cause of Action, hereby incorporates Paragraphs 1 through 43 of the First and Second Causes of Action.

45. The conduct of Defendants, and each of them, was outrageous and unprivileged, amounting to a willful, intentional and reckless disregard for the rights of Plaintiff with the probability of causing emotional distress to Plaintiff and was intentional and malicious, done for the purpose of causing plaintiffs to suffer anxiety, mental anguish and severe emotional and physical distress.

1 46. The conduct set forth above directly and proximately caused severed and
2 protracted emotional distress to Plaintiff and still causes Plaintiff to suffer, and will continue
3 to cause Plaintiff to suffer in the future.
4

5 47. As a direct and proximate result of the aforementioned acts of Defendants, and
6 each of them, Plaintiff has suffered physical, mental and psychological pain and anguish.
7 As a further result thereof, by reason of his injuries, Plaintiff has incurred expenses and will
8 necessarily incur additional like expenses for an indefinite period of time in the future; the
9 exact amount of such expenses will be stated according to proof, pursuant to California
10 Code of Civil Procedure Section 425.10.

12 48. As a direct and proximate result of the conduct of Defendants, and each of them,
13 Plaintiff was hurt and injured in his health, strength and activity, sustaining injury to his
14 body and shock and injury to his nervous system and person, all of which said injuries have
15 caused and continue to cause Plaintiff great physical, mental and nervous pain and suffering.
16 Plaintiff is informed and believes, and thereupon alleges, that said injuries will result in
17 some permanent disability to him, all to his general damage, in an amount according to
18 proof pursuant to California Code of Civil Procedure Section 425.10.

20 49 As further direct and proximate result of the conduct of Defendants, and each of
21 them, Plaintiff was caused to, and did suffer, severe emotional distress and anxiety, causing
22 additional injuries according to proof, pursuant to California Code of Civil Procedure
23 Section 425.10.

25 50.. All of the foregoing acts by Defendants, and each of them, constituted an utter
26 wanton, conscious and careless disregard of the rights of Plaintiff and, as such conduct
27 constituted oppression, fraud or malice under California Civil Code Section 3294, Plaintiff
28 requests punitive and exemplary damages as set forth hereinafter; inherent in Plaintiff's right

1 to redress by exemplary damages are the following purposes: that said Defendants, and each
2 of them, be deterred from continuing their conscious and despicable disregard for the rights
3 of Plaintiffs and persons similarly situated; that said Defendants, and each of them, be liable
4 for such punitive measures and in such punitive amounts as to constitute an example which
5 would deter them, as well as similar persons and entities in the same industries, from like
6 wanton, malicious, conscious and despicable disregard for the rights of the public; and that
7 in order for the purposes to be fulfilled of the right to redress by exemplary damages, the
8 punitive and exemplary damages should be in proportion to the assets and income of said
9 Defendants.

10
11 51.. As a further proximate result of the said negligent, careless, wanton and
12 reckless conduct of the defendant, plaintiff has suffered general damages.
13

14 WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, as
15 follows:

16 On account of all Causes of Action,

- 17 1. The damages in the sum of approximately \$14,000.00, consisting of the amount
18 which Plaintiff incurred for attorney's fees and costs and the successful defense of the
19 Fancher/Roybal I agreement and its terms;
20
21 2. General damages of not less than \$1,000,000.00;
22
23 3. Damages for Plaintiff's mental anguish and emotional distress, in an amount
24 within jurisdiction of this Court, according to proof;
25
26 4. For costs of suit herein incurred; and
27
28 5. For such other and further relief as the Court deems proper.

On account of the First and Second Causes of Action,

1. For attorney's fees, according to proof;

On account of the Third Cause of Action,

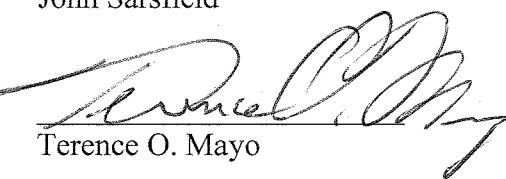
1. For punitive damages against all Defendants in the sum of not less than
\$5,000,000.00.

1 Dated: July 24, 2009

MAYO & MAYO
Attorneys for Plaintiff
John Sarsfield

2 By:

3 Terence O. Mayo



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7 **DEMAND FOR JURY TRIAL**

8

9 Plaintiff hereby demands trial by jury.

10 Dated: July 24, 2009

11 MAYO & MAYO
12 Attorneys for Plaintiff
13 John Sarsfield

14 By:

15 Terence O. Mayo



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